WEST COAST EXPRESSWAY SDN BHD v. PENTADBIR TANAH DAERAH KLANG & ORS

HIGH COURT MALAYA, SHAH ALAM
CHOONG YEOW CHOY JC
[ORIGINATING SUMMONS NO: BA-24NCvC-2153-12-2022]
13 FEBRUARY 2024

Abstract – *A party who wishes to challenge an assessment by the Land Administrator must do so within six weeks from the date of the Land Administrator's award. However, in determining whether an extension of time ought to be granted, there must exist special circumstances to justify enlargement of the period of six weeks prescribed in s. 38(3)(a) of the Land Acquisition Act 1960. What constitutes 'special circumstances' depends on the facts of each case.*

LAND LAW: *Acquisition – Assessment – Compensation – Challenge against award of compensation – Time period statutorily-prescribed to challenge assessment – Late service of LC Form by State Authority by more than seven months after award of compensation – Application for extension of time to object to award of compensation – Whether there exists special circumstances to justify enlargement of time – Land Acquisition Act 1960, s. 38(3)(a)*

The plaintiff was awarded a concession, by the Government of Malaysia and the Malaysian Highway Authority ('MHA'), to carry out the West Coast Expressway Project. For this purpose, a portion of the land belonging to the third defendant was acquired and an enquiry was held by the Pentadbir Tanah Daerah Klang ('first defendant'). The total amount of compensation awarded was RM36,497,627.50. The plaintiff later withdrew the said acquisition and proposed for a reduction in the size of the land to be acquired. An enquiry was again held by the first defendant and this was attended by the plaintiff's representative. By way of an LC Form dated 7 February 2022, the first defendant awarded a total amount of compensation of RM49,935,546.50 for 15 different plots. The third defendant was compensated with an award of RM3,505,530 ('award of compensation'). The MHA was only informed of this, by the Jabatan Ketua Pengarah Tanah dan Galian Persekutuan ('JKPTG'), on 1 September 2022. The MHA then forwarded the JKPTG's letter to the plaintiff and requested for the plaintiff to make the necessary payment. The plaintiff immediately informed the JKPTG, on 23 September 2022, that it only received the LC Form and notice to pay for the award of compensation on 20 September 2022 and sought to object to the said award of compensation. The JKPTG conceded that the delay was indeed caused by them and advised the plaintiff to apply

for an extension of time in order to challenge the award of compensation. Hence, the present application by the plaintiff, for an extension of time, pursuant to s. 38(4) of the Land Acquisition Act 1960 ('Act').

Held (allowing application):

(1) As the plaintiff, being the person making the application, was represented before the Land Administrator at the time when the Land Administrator made his award, s. 38(3)(a) of the Act applied. Since the period of six weeks had elapsed, s. 38(4) expressly states that 'the period of six weeks prescribed by para. (3)(a) … shall not be capable of enlargement by any court, except in such special circumstances as the court may think fit'. What would amount to or constitutes as 'special circumstances' is case specific, that is, to be determined based on the factual matrix of the case. (paras 43 & 44)

(2) The delay on the part of the plaintiff was occasioned by the State Authority's late service of the LC Form on the plaintiff, which was more than seven months after the said award of compensation. This was conceded by the State Authority. This fact alone would be sufficient for the court to exercise its discretion to enlarge time, pursuant to s. 38(4) of the Act, on the ground that special circumstances existed. (paras 45 & 46)

Case(s) referred to:

Lai Tai v. The Collector Of Land Revenue [1960] CLJU 49; [1960] 1 LNS 49 HC ***(refd)***

Lau Cher Hian v. Collector Of Land Revenue, Muar [1969] CLJU 77; [1969] 1 LNS 77 FC ***(refd)***

Low Nam Hui & Sons Sdn Bhd v. Huang Yan Teo [2007] 6 CLJ 27 CA ***(refd)***

MMC Tepat Teknik Sdn Bhd v. Pentadbir Tanah Daerah Klang & Anor And Other Appeals [2023] 9 CLJ 1 FC ***(refd)***

Pentadbir Tanah Daerah Petaling v. Swee Lin Sdn Bhd [1999] 3 CLJ 577 CA ***(refd)***

Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan [2009] 1 CLJ 13 FC ***(refd)***

UDA Holdings Bhd v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2012] 10 CLJ 867 HC ***(refd)***

West Coast Expressway Sdn Bhd v. Pentadbir Tanah Daerah Klang [2019] CLJU 2089; [2019] 1 LNS 2089 HC ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 2, 8, 32, 35(2)(c), 38(3)(a), (b), (4), 55(1)(a)
National Land Code, ss. 16(2), 53(2), 115(1), (4)

For the plaintiff - David Dinesh Mathew, David Ng & Ananthan Moorthi; M/s Steven Thiru & Sudhar Partnership
For the 1st & 2nd defendants - Etty Eliany Tesno; State Legal Advisor, Selangor
For the 3rd defendant - Govin T Durai; M/s Govin T Durai & Co

Reported by Najib Tamby

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JUDGMENT

Choong Yeow Choy JC:

Introduction

B **[1]** Every legal practitioner must surely be fully cognisant of the strict time periods prescribed by the various statutes and provisions in the Rules of Court 2012 for actions or steps to be taken by litigants in the civil litigation process. Parties who ignore the dictates of these rigorous timetables do so at their own peril.

C **[2]** The present matter before this court illustrates the importance of adherence to a time period prescribed in the Land Acquisition Act 1960 ("LAA").

[3] The subject matter in focus relates to the application of s. 38(3)(a) of the LAA whereby a party intending to challenge an assessment by the Land D Administrator made under s. 35 of the said Act is required to take the necessary measures "within six weeks from the date of the Land Administrator's award". In its originating summons, the plaintiff has sought to invoke s. 38(4) of the LAA for an extension of time.

The Overriding Issue

E **[4]** In determining the superseding issue of whether an extension of time ought to be granted to the plaintiff, this court will have to consider whether there exist special circumstances to justify the enlargement of the period of six weeks prescribed in s. 38(3)(a) of the LAA.

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The Parties And Background Facts Giving Rise To The Present Application

[5] The plaintiff, West Coast Expressway Sdn Bhd, is an 80% owned subsidiary of WCE Holdings Bhd. It is responsible for the design, construction, management, operation, and maintenance of the West Coast G Expressway.

[6] The first defendant, the Pentadbir Tanah Daerah Klang, is a statutory body responsible for the land administration in the district of Klang. It exercises general control and supervision over land acquisition proceedings, including the determination of any award of compensation.

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[7] The second defendant is the Pengarah Tanah dan Galian Selangor. The second defendant has issued a declaration for the withdrawal of acquisition (which is the subject matter of the instant application). The second defendant has been named as a party in the instant application pursuant to the requirements of s. 16(2) of the National Land Code.

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[8] The third defendant, Midas Plus Sdn Bhd, is the beneficial owner and/or interested party to Plots A1, A2, A3, A4, A5, A6, B1 and B2, on a piece of land known as Lot 10478 GRN 20088 Mukim Klang Daerah Klang, Negeri Selangor measuring 4.0470 hectares ("the said land").

[9] The plaintiff was awarded a concession by the Government of Malaysia and the Malaysian Highway Authority to carry out the West Coast Expressway Project ("WCE project"). This WCE project is an interstate controlled-access highway running along the west coast of Peninsular Malaysia.

[10] For the purposes of carrying out the WCE project, various land acquisition proceedings were commenced in the State of Selangor from the year 2013 to the present date. In this regard, a portion of the said land (measuring 2.0905 hectares) was identified as one of the lands to be acquired for purposes of the WCE project ("the said acquisition").

[11] On or about 27 September 2017, an enquiry was held by the first defendant to determine the award of compensation for the said acquisition wherein a total amount of compensation awarded was in the sum of RM36,497,627.50.

[12] As the concessionaire and ultimate paymaster of the project, the aforesaid compensation was to be made payable by the plaintiff.

[13] Sometime in May 2021, the plaintiff decided to withdraw the said acquisition and proposed for a reduction in the size of the said land to be acquired, that is, from 2.0905 hectares to 1.5227 hectares. The reasons for this decision have no bearing on the outcome of the present application.

[14] However, as a result of the above decision, a notice of withdrawal from the said acquisition was gazetted on 7 May 2021 pursuant to s. 35 of the LAA and at the same time, a notice of acquisition for part of the said land measuring of 1.5277 hectares was gazetted pursuant to s. 8 of the LAA.

[15] Thereupon, an enquiry was held by the first defendant to assess the award of compensation arising from the withdrawal of the said acquisition. This took place on or about 10 January 2022.

[16] It is apposite to point out that the plaintiff's representative attended the enquiry conducted by the first defendant.

[17] By way of an LC Form dated 7 February 2022 ("the LC Form"), the first defendant awarded a total amount of compensation in the sum of RM49,935,546.50 for the withdrawal from the said acquisition. This award of compensation was awarded for 15 different plots on a single plot of land (Lot 10478) and made payable to 15 different beneficial owners of those said plots. Hence, this is one of 15 originating summonses filed before this court and all 15 originating summonses are based on the same set of facts and circumstances wherein the respective beneficial owners are named as the

third defendant. The compensation awarded to the third defendant in this present suit is in the sum of RM3,505,530 (for Plots A1, A2, A3, A4, A5, A6, B1 and B2) ("the said award of compensation").

[18] Interestingly, the Malaysian Highway Authority was only informed and/or requested by the Jabatan Ketua Pengarah Tanah & Galian Persekutuan ("JKPTG") to make payment of the said award of compensation through a letter by JKPTG dated 1 September 2022. Evidently, this was almost seven months after the enquiry and determination of the award of compensation for the withdrawal of the said acquisition.

[19] On 20 September 2022, the Malaysian Highway Authority forwarded JKPTG's letter to the plaintiff and requested for the plaintiff to make payment of said award of compensation.

[20] Immediately thereafter, on 23 September 2022, the plaintiff informed JKPTG, *inter alia*, that it only received the LC Form and notice to make payment for the said award of compensation on 20 September 2022 and sought to object to the said award of compensation.

[21] JKPTG wrote to the plaintiff on 6 October 2022 and conceded that "... Kami mengakui kelewatan penerimaan surat rasmi Borang LC adalah berpunca daripada pihak jabatan ini" and advised the plaintiff to file an application to obtain an extension of time to file Form N under the LAA, so that the plaintiff may object to the said award of compensation.

The Parties' Contentions

[22] The plaintiff's application for an extension of time pursuant to s. 38(4) of the LAA 1960 is premised on the ground that this court is vested with the power to grant an extension of time " ... in such special circumstances as the court may think fit."

[23] The plaintiff relied on numerous authorities for the propositions that there is no hard and fast rule as to what constitutes "special circumstances", in the context of the LAA 1960, that ultimately it would depend on the factual matrix of each case and that the category of special circumstances can never be closed or limited. The cases cited include *Lau Cher Hian v. Collector Of Land Revenue, Muar* [1969] CLJU 77; [1969] 1 LNS 77; [1971] 1 MLJ 96; [1969] 1 MLRA 504, *Lai Tai v. The Collector Of Land Revenue* [1960] CLJU 49; [1960] 1 LNS 49; [1960] 1 MLJ 82; [1960] 1 MLRH 266, *Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan* [2009] 1 CLJ 13; [2008] 6 MLJ 763; [2008] 2 MLRA 469 and *Low Nam Hui & Sons Sdn Bhd v. Huang Yan Teo* [2007] 6 CLJ 27; [2007] 6 AMR 649; [2007] 7 MLJ 13; [2007] 2 MLRA 301.

[24] Reference was also made to *UDA Holdings Bhd v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2012] 10 CLJ 867; [2012] AMEJ 0135; [2012] 6 MLJ 242; [2013] 2 MLRH 87 where Prasad Sandosham Abraham J (as His Lordship then was) stated as follows:

> [18] ... Section 38(4) of the said Act, clearly provides an avenue to the court to temper the rigidity of the law and procedure set out in the said Act. The court in deciding whether or not to exercise its discretion should consider on the facts of the case, whether justice requires the court's intervention and each case should be decided on its own facts.

[25] According to the plaintiff, the following three grounds constitute as special circumstances, that is:

(i) the said award of compensation is tainted by reason of "*ultra vires*", invalid and/or illegality;

(ii) there is no prejudice whatsoever caused to any parties, including the third defendant; and

(iii) any purported delay was occasioned by the State Authority's late service of the LC Form, that is, more than seven months after the said award of compensation.

[26] On the "*ultra vires*", invalid and/or illegality argument, the plaintiff alluded to the following facts as relevant, namely, (i) that the category of land use of the said land is nil and the express condition imposed is "tiada"; (ii) buildings/factory structures have been constructed on the said land for purposes of the third defendant's commercial activity; and (iii) as a result, a significant portion of the said award of compensation is in respect of the "Kos Kacau Ganggu Perniagaan (41 bulan)", that is, RM47,889,148.

[27] The root of the plaintiff's contention is that since the said land was alienated before the commencement of the National Land Code and there is no category of land use imposed, the implied condition is that the land shall only be used for "agricultural" purposes. Therefore, the argument that follows is that only a building for the purposes of agricultural or for the purposes of as of a dwelling house may be erected on the said land and buildings/factory structures constructed on the said land for any other purposes are in breach of the category of use for the said land. Hence, any grant of compensation for any losses related to the use of these buildings are unlawful. The authorities cited are ss. 53(2) and 115(1) and (4) of the National Land Code, *Pentadbir Tanah Daerah Petaling v. Swee Lin Sdn Bhd* [1999] 3 CLJ 577; [1999] 3 AMR 3074; [1999] 3 MLJ 489; [1998] 2 MLRA 438 and *MMC Tepat Teknik Sdn Bhd v. Pentadbir Tanah Daerah Klang & Anor And Other Appeals* [2023] 9 CLJ 1; [2023] 6 AMR 575; [2023] 5 MLJ 520; [2023] 6 MLRA 14 ("*Tepat Teknik*"). In *Tepat Teknik*, the Federal Court held that all claims related to illegally constructed buildings (in contravention of the category of land use in the document of title) are not compensable, including the use of these buildings.

[28] The plaintiff further raised the argument that the said award of compensation is grossly excessive and exorbitant as compared to the other awards given for seven other lots of land similarly involved in the

withdrawal from acquisition exercise and since the said award of compensation is '*ultra vires*', invalid and/or tainted by illegality, the plaintiff submitted that this alone satisfies the existence of special circumstances in this case.

[29] On the "no prejudice" point, it is the plaintiff's contention that the third defendant will ultimately be adequately compensated for both the withdrawal and subsequent re-acquisition of the said land. The plaintiff further claimed that both the withdrawal and subsequent re-acquisition exercises of the said land were conducted in accordance with the statutory provisions in ss. 8 and 35 of the LAA 1960 and these provisions accord the necessary measures of safeguard against any affected party.

[30] The plaintiff further alluded to the fact that the third defendant has lodged its own objection to the said award and the matter is pending disposal before the Shah Alam High Court. The plaintiff's submission is that both the objections by the plaintiff and the third defendant should be heard together.

[31] As for the allegation that there will be a delay in making payment of the said award of compensation to the third defendant if the present application by the plaintiff is allowed, the plaintiff countered that the third defendant would in any event be paid late payment charges at the rate of 5% per annum when the said award of compensation is not made payable to them from the due date until the time of such payment or deposit, as provided in s. 32 of the LAA 1960.

[32] As for the submission that the delay was occasioned by the State Authority's late service of the LC Form, that is, more than seven months after the said award of compensation, the plaintiff's case is that it had not slept on its rights and thus should not be penalised.

[33] It is pertinent to point out that the first and second defendants, that is, the State Authorities, have no objection to the present application.

[34] In opposing the present application, the third defendant's main contentions are that first, since the plaintiff's representatives were present at the enquiry, there is no statutory requirement for the Form LC to be served on the plaintiff. Thus, the plaintiff should not be allowed to rely on the late service of the Form LC on 20 September 2022.

[35] Second, the third defendant is arguing that the position taken by the first and second defendants in the instant application is irrelevant. The basis of this argument is that the first and second defendants are not recognised as "persons interested" under the LAA 1960.

[36] The third ground advanced by the third defendant is premised on the plaintiff's prior involvement in the said acquisition of the said land. Henceforth, it is the third defendant's contention that the plaintiff was aware of the procedures involved in filing objection against and award of

compensation. In this regard, the third defendant alluded to the decision in *West Coast Expressway Sdn Bhd v. Pentadbir Tanah Daerah Klang* [2019] CLJU 2089; [2019] 1 LNS 2089; [2020] 9 MLJ 337; [2019] MLRHU 1610, where another application for an extension of time was also made by the plaintiff.

[37] The fourth ground raised by the third defendant is that the plaintiff has no *locus standi* to file Form N to object to the award of compensation.

[38] In response to the first of the above four grounds, the plaintiff submitted that there is indeed a mandatory requirement to serve the Form LC on WCE pursuant to ss. 35(2)(c) and 55(1)(a) of the LAA 1960 and that this statutory requirement to serve the Form LC does not depend on the presence of the plaintiff's representatives at the enquiry. The plaintiff's position is that the presence of its representatives is only relevant to determine whether the timeline under s. 38(3)(a) or 38(3)(b) of the LAA 1960 applies. The requirement to serve the Form LC remains intact. Based on this line of argument, the plaintiff claimed that it would have filed its objection within the stipulated time under s. 38(3)(a) of the LAA 1960 had it been served with the Form LC.

[39] In relation to the second ground raised by the third defendant, the plaintiff reasoned that since the first and second defendants, as the State Authorities, have not objected to the instant application, they have accepted the plaintiff's justifications in support of the instant application and the existence of special circumstances in the factual matrix of this case.

[40] As for the previous application by the plaintiff in another case, the plaintiff's position is that the previous application for an extension of time to object the award of compensation awarded for the said acquisition is premised upon completely different facts and circumstances and this itself had been conceded by the third defendant when it stated in its reply submissions that "the excuses given there were different".

[41] Finally, on the *locus* point, the plaintiff's reply is that as the paymaster, it is a person interested under s. 2 of the LAA 1960.

The Decision Of This Court

[42] What is evident is that in the present application, an award for compensation had been made by the Land Administrator at an enquiry and an objection against the Land Administrator's award of compensation is now the subject matter for determination. As it concerns the timeframe for an application to be filed, this has triggered the application of s. 38(3) and (4) of the LAA 1960. For ease of reference, the relevant provision states as follows:

A (3) Every application under subsection (1) shall be made:

(a) if the person making it was present or represented before the Land Administrator at the time when the Land Administrator made his award, within six weeks from the date of the Land Administrator's award under section 14 or compensation made under section 35 or Part VII;

B

(b) in other cases, within six weeks of the receipt of the notice from the Land Administrator under section 16, paragraph 35(2)(c), subsection 58(1) or section 59 or within six months from the date of the Land Administrator's award under sections 14, 35 or Part VII, whichever period shall first expire.

C

(4) The period of six weeks prescribed by paragraph (3)(a) and the periods of six weeks and six months prescribed by paragraph (3)(b) shall not be capable of enlargement by any Court, except in such special circumstances as the Court may think fit.

D **[43]** As the plaintiff (the person making the application) was represented before the Land Administrator at the time when the Land Administrator made his award, s. 38(3)(a) applies. Since the period of six weeks has elapsed, the s. 38(4) expressly states that "the period of six weeks prescribed by para. (3)(a) ... shall not be capable of enlargement by any court, except in such special circumstances as the court may think fit".

E

[44] This court is bound by and in agreement with the authorities referred to in paras. [23] and [24] above that what would amount to or constitute as "special circumstances" is case specific, that is, to be determined based on the factual matrix of the case.

F **[45]** This court is satisfied that the delay on the part of the plaintiff was occasioned by the State Authority's late service of the LC Form on the plaintiff, that is, more than seven months after the said award of compensation. This is conceded by the State Authority.

G **[46]** This fact alone would be sufficient for this court to exercise its discretion to enlarge time under s. 38(4) of the LAA 1960 on the ground that there exist special circumstances.

[47] The third defendant raised the point that the representative of the plaintiff was present when the land enquiry was conducted by the first

H defendant on 7 February 2022 and that the representative did not object to the Land Administrator at that very day. However, an objection can be made within six weeks from the time the award is made.

[48] Service of the LC Form is mandated, in particular, under s. 35(2)(c) of the LAA 1960. The relevant provision states as follows:

I Withdrawal from acquisition

35. (1) The State Authority shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(1A) A notification in Form LA shall be published in the Gazette and all proceedings already taken or being taken in consequence of the declaration in subsection 8(1) in respect of the land shall cease to have effect.

(2) Whenever the State Authority withdraws from any acquisition under subsection (1), the Land Administrator, after notifying the person interested in Form LB, shall:

(a) determine the amount of compensation due for the damage, if any, done to such land by action taken under section 5 and not already paid for under section 6, and pay such amount to the person injured;

(b) pay to the persons interested all such costs as shall have been incurred by them by reason or in consequence of the proceedings for acquisition, together with compensation for the damage, if any, which they may have sustained by reason or in consequence of such proceedings; and

(c) prepare and serve on each person interested a notice in Form LC.

For purposes of computation of the six-week period, time runs from the date when the Form LC is served.

[49] The third defendant had also averred to the fact that the plaintiff had on a previous occasion applied for an extension of time. As that application was based on different considerations, it is irrelevant for the purposes of the present application.

[50] Having considered the facts before it, together with all the points raised by the third defendant, this court is of the view that there exist special circumstances justifying the exercising of its discretion in favour of the plaintiff.

[51] Order in terms as per prayers (1), (2) and (3) in encl. 1.

[52] As neither the plaintiff nor the third defendant is to be blamed for the events leading to the filing of this application in encl. 1, this court makes no order as to costs.